**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**

**ORDER.**

(1) S.B. Civil Writ Petition No.733/2004

I.C.A.R. & anr. vs. The State of Raj. & ors.

(2) S.B.Civil Writ Petition No.7083/2003

I.C.A.R. & anr. vs. The State of Raj. & ors.

Under Article 226 and 227 of the Constitution of India.

Date of Order: January 6th ,2005.

**PRESENT**

**HON'BLE MR. PRAKASH TATIA,J.**

MR. J.P. Joshi for the petitioners.
Mr. Shyam Ladrecha, Addl. Govt. Advocate
Mr. L.R. Upadhyaya, Dy.Govt.Advocate.

**BY THE COURT:**

since these writ petitions are having common facts and grounds, therefore, the facts of S.B.Civil Writ Petition No.733/2004 will be sufficient for the purpose of deciding controversy between the parties, therefore, both these writ petitions are being decided by this common judgment.

Heard learned counsel for the parties.

The brief facts of the case are that according to the petitioner, the properties belonging to the Indian Council of Agricultural Research (for short ICAR) and the Central Arid Zone Research Institute (for short CAZRI), are the properties of the Union of India and, therefore, these properties are exempt from payment of tax in terms of Article 285 of the Constitution of India and, therefore, any authority under the State is not competent to levy any State tax on the properties held by the Union of India.

According to the petitioner, despite above legal position, the Assistant Director, Land and Building Tax initiated proceedings to levy land and building tax on the properties of the Union of India held by the CAZRI which is a unit of ICAR and which is a department working under the Ministry of Agriculture, Government of India. According to the learned counsel for the petitioner, Hon'ble the Supreme Court has an occasion to consider the status of ICAR in the case of P.K. Ramachandra Iyer and others vs. Union of India & ors. reported in AIR 1984 SC 541. Hon'ble the Supreme Court in the said case took note of the facts and held that the Indian Council of Agricultural Research (ICAR) even though it is a Society registered under the Societies Registration Act, still in view of the fact that it was wholly financed by the Government of India, its budget was

voted upon as part of the expenses incurred in the Ministry of Agriculture and it was declared as an attached office of the Government of India and control of the Government of India permeates through all its activity and it is the body to which the Government of India transferred Research Institutes set up by it and in order to make it financially viable, a cess was levied, meaning thereby that the taxation power of the State was invoked and the proceeds of the tax were to be handed over to the ICAR for its use. This by itself is sufficient to make it an instrumentality of the State. Therefore, according to the learned counsel for the petitioner, the action of the respondents of levying tax on the properties of the petitioner is in violation to Article 285 of the Constitution of India. Therefore, by an appropriate writ, order or direction, it may be declared that the properties held by the petitioners are exempt from the payment of land and building tax in view of Article 285 of the Constitution of India read with Section 6 of the Rajasthan Land and Building Tax Act, 1964 (for short the Act of 1964). The petitioner also sought relief of quashing of the of assessment order dated 20.10.2003 (Annx.5) and demand notice dated 22.2.2003 (Annx.6)in S.B.Civil Writ Petition No. 733/2004 and assessment order dated 20.10.2003 (Annx.12) and demand notice dated 20.10.2003 (Annx.13) in S.B.Civil Writ Petition No.7053/2003.

Reply has been filed by the respondents. According to the respondents, the ICAR is a Society registered under the Societies Registration Act, 1980 and it is a autonomous body and is owned and administered by its own rules and regulation and, therefore, the properties in question are not the properties of the Union of India. The respondents relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Chandra Mohan Khanna vs. NCERT reported in AIR 1992 SC 76, wherein it has been held that:-

> "Article 12 should not be stretched so as to bring in every autonomous body which has come nexus with the Government within sweep of expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of welfare state, independent institution, corporation and agency which generally subject to State control. The State control does not render such bodies on "State" under article 12, the state control however vast and pervasive is not determinative. The financial contribution by the state is also not conclusive. The combination of state aid coupled with a unusual disagree of control over the management and policies of the body and rendering of an important public service having obligatory functions of the state may largely point out that body is "State". If the Government operates behind a corporate veil carrying out. Government activity and Government functions of vital public importance there may be little difficulty in identifying the body as "State" within the meaning of Article 12."

On this count, the respondents tried to justify their action for demanding tax on the properties in question.

I considered the submissions of the learned counsel for the parties. It will be worthwhile to quote para no.9 and 10 of the said judgment of the Hon'ble Supreme Court delivered in the case of P.K. Ramachandra Iyer (supra):-

> " 9. A very brief resume of the history of ICAR commencing from its initial setup and its development into its present form, it is a society registered under the Societies Registration Act but substantially when set up it was an adjunct of the Govt. of India and has not undergone any noteworthy change. On the advent of the provincial autonomy under the Govt. of India Act, 1919, "Agriculture" and "Animal husbandry" came under the heading "transferred subject" with the result that they came within the exclusive jurisdiction of the Provincial Govt. Development of agriculture and research in agriculture became the responsibility of the Provincial Govt. Even then a Royal Commission on Agriculture was constituted in 1926 to enquire into the agricultural set up and the rural economy of the country and to make recommendations to consider what firm steps are necessary to be taken by the Central Govt. in this behalf. The Commission in its report recommended the setting up of Imperial Council of Agricultural Research. Acting upon this recommendation, Govt. of India set a telegram to the Secretary of State on April 24, 1929 informing the latter that the process of setting up of the Council is under way and that when set up Council would be a society. On May 1929, the Central Govt. directed that Imperial Council of Agricultural Research should be registered as a Society under the Registration of Societies Act, XXI of 1860. The Resolution further provided that with respect to the grant to be made to the Council to meet the cost of staff, establishment etc. the Govt. of India decided that for reasons of administrative convenience, it should be in the same position as a department of the Govt. of India Secretariat. The Imperial Council of Agricultural Research was set up in June 1929. A direction was also given that the research institutes were to be maintained by the Council. In their counter-affidavit filed in the High Court of Delhi, it was conceded in para 27 that the Imperial Council of Agricultural Research should in future be an

attached office and not the department of the Govt. to be entirely manned by Govt. staff and the secretariat staff of the Council was to be paid from the grant to be given by the Govt. for its administration and they would be Govt. servants and the Secretariat would be department of the Govt. of India. In July, 1929, ICAR was registered as a Society with its office in the Secretariat as an attached office of the Secretariat. By the Resolution, dated August 4, 1930, Govt. of India directed that for reasons of administrative convenience “the Governor General in Council has now decided that the Imperial Council of Agricultural Research Deptt. As the Secretariat of the Council, will hence-forth be designated, should be a regular department of the Govt. of India Secretariat under the Hon'ble Member in charge of the Department of Education, Health and Lands.” A note was submitted on December 29, 1937 to the then Viceroy concerning the status and position of the ICAR as a Department of the Govt. in which it was recommended that ICAR should not only be maintained as a distinct entity independent of the Govt. of India and with a view to achieving this position, the office of the ICAR should not in future be a department of the Govt. of India but should be an attached office. This proposal was approved by the Viceroy on January 14, 1938 simultaneously expressing his anxiety to sustain the prestige of ICAR. The next step is one taken by the Resolution dated January 5, 1939 by which the Govt. of India modified the status of the ICAR from the Department of the Secretariat to one of an attached office of Govt. of India. A letter was addressed to the High Commissioner for India in London on January 14, 1939 intimating to him that the Secretariat of the ICAR will cease to be a department of the Govt. of India and will be an attached office under the department of Education, Health and Lands with effect from January 15, 1939. Till then recruitment to various posts in ICAR was made through Federal Public Service Commission and this was to be continued even after the change in the status of ICAR as an attached office as evidenced by the letter dated August 24, 1939 by the Joint Secretary to Govt. of India to the Federal Public Service Commission. A bill was introduced in the Central Legislature styled as the “Agricultural Produce Cess Bill, 1949”. The statement of objects and Reasons accompanying the bill recited that the Central Govt. have provided grants to the tune of Rs.34 lakhs for the expenditure of

the Council, and took notice of the fact that the Council has practically no source of income other than the contribution from the Central Revenue which may be unstable depending upon the state of finances of the Central Govt. It was further observed that in order to place Council on a more secured financial position, it has been decided by levy a cess at the rate of ½% on the value of certain agricultural commodities and the proceeds of the proposed cess are estimated to amount in a normal year to about Rs.12 lakhs. The bill was moved. In the debate upon the bill, a statement was made on behalf of the Govt. of India that the Central Legislature will retain its full right of interpolation and of moving resolutions and will still vote on the grant of the permanent staff, and some of the activities of the Council. In other words, an assurance was given that the Central Legislative Assembly will have positive control over the affairs of the Council to the some extent and degree when it was a Govt. of India. On the advent of independence the Imperial Council of Agricultural Research was re-designated as Indian Council of Agricultural Research. With effect from April 1, 1966, administrative control over IARI and IVRI and other institutes as transferred to ICAR simultaneously placing the Govt. staff of the institutes at the disposal of ICAR as on foreign service. This is evidenced bya communication dated April 19, 1966 addressed by the Ministry of Agricultural, Food Community, Development and Cooperation to the Directors of Central Research Institutes. An option was given to the members of the staff of the Institutes, administrative control of which was transferred to ICAR and the date for exercising the option was extended by the communication dated November 9, 1966. In the meantime, the Govt. of India enforced the new rules framed by the ICAR effective from January 10, 1966 keeping Rule 18 in abeyance. With the change in the status of the ICAR, Department of Agricultural Research and Education (“DARE” for short) was set up in the Ministry of Agriculture and it came into existence on December 15, 1973. This Department was set up with a view to providing necessary Govt. linkage with ICAR. The major function of the Deptt. Was to look after all aspects of agricultural research and education involving co-ordination between Central and State agencies; to attend to all matters relating to the ICAR; and to attend to all matters concerning the development of new technology in agriculture,

animal husbandry and fisheries, including such functions as plant and animal introduction and exploration, and soil and land use survey and planning. By this very Resolution, the Director General of ICAR was concurrently designated as Secretary to Govt. of India and the DARE. The position of ICAR was clarified to the effect that in the re-organised set up, the ICAR will have the autonomy essential for the effective functioning of a scientific organisation and deal with sister departments of the Central Govt. with State Govts. And also with international agricultural research centres through the DARE. Rule 18 of the ICAR rules which was kept in abeyance on January 10, 1966 was brought into operation in its entirety effective from April 1, 1974 by the Ministry of Agriculture to the Secretary, ICAR. The consequence of R.18 becoming operative was that the Secretariat of ICAR ceased to be an attached office of the Ministry of Food and Agriculture and the Society shall function as "wholly financed and controlled by the Society". This last sentence hardly makes any sense. Till R. 18 as stated earlier became operative from April 1, 1974. Till R.18 was kept in abeyance, recruitment to ICAR was done through the Union Public Service Commission as evidenced by the letter dated August 24, 1938 of the Govt. of India to the Secretary. Federal Public Service Commission, Simla. Rule 18 as stated earlier became operative from April 1, 1974. Rule 18 provides that "the Society shall establish and maintain its own office, Research Institutes and Laboratories. The appointment to the various posts under the Society's establishment was to be made in accordance with the Recruitment Rules framed for the purpose by the governing body with the approval of the Government of India."

10. Apart from the criteria devised by the judicial dicta the very birth and its continued existence over half a century and its present position would leave no one in doubt that ICAR is almost an inseparable adjunct of the Government of India having an outward form of being a Society, it could be styled as a Society set up by the State and therefore, would be an instrumentality of the State."

The petitioner, in his petition came out with the

purposes for which ICAR was established way back in the year 1970. The purposes are as under:-

> “2. The objects for which the Indian Council of Agricultural Research is established are:
>
> (a) To undertake, aid, Promote, and coordinate agricultural and animal husbandry education, research and its application in practice, development and marketing in India and its protectorates and any other areas in or in relation to which the Govt. of India has and exercises any jurisdiction by treaty, agreement, grant usage, sufferance or other lawful means by all means calculated to increase secure its adoption in every day practice.
>
> (b) To act as a clearing house of information not only in regard to research but also in regard to agricultural and veterinary matters generally.
>
> (c) For the purposes of the Society to draw and accept and make and endorse discount and negotiate Govt. of India and other promissory notes, bills of exchange, cheques or other negotiable instruments.
> (d) to invest the funds of , or money entrusted to, the society upon such securities or in such manner as may from time to time be determined by the Governing Body and from time to time to sell or transpose such investments.
>
> (e) To purchase, take on lease, accept as a gift or otherwise acquire, any land or building, wherever situate in India which may be necessary or convenient for the society.
>
> (f) To construct or alter any building which may be necessary for the society.
>
> (g) To sell, lease, exchange and otherwise transfer all or any portion of the properties of the Society.
>
> (h) To establish and maintain a research and reference library in pursuance of the objects of the Society with reading and writing rooms and to furnish the same with books, reviews, magazines, newspapers and other publications.
>
> (i) To do all other such things as the society

may consider necessary, incidental or conducive to the attainment of the above objects."

According to the petitioner, the CAZRI is working at Jodhpur since 1.10.1959 and at no point of time it was called upon by the State of Rajasthan to deposit the land and building tax and the petitioner was not required to submit return under Section 18 of the Act of 1964. The petitioner also submitted representation before the Chief Secretary, Govt. of Rajasthan inviting their attention to the fact that ICAR is a society fully owned and controlled by the Central Government and is being funded and financed by the Central Government and, therefore, it is exempt from the payment of land and building tax under Article 285 of the Constitution of India, therefore, necessary orders in this regard may be issued by the State Government so that further proceedings by the Assistant Director, Land & Building Tax for levying the land and building tax against the petitioner may not be taken. When no decision was taken by the State Government on the representation of the petitioner and the Assistant Director, Land & Building Tax issued notice under Section 11(1) of the Act of 1964 calling upon the petitioner to appear before him and file return and a provisional valuation was also made by the respondent no.3, then the petitioner preferred writ petition before this Court being S.B.Ciovil Writ Petition No.4475/2001, but during the pendency of the said writ petition, the Assistant Director, Land & Building Tax,

Jodhpur made an assessment vide assessment order dated 6.12.2001, therefore, the petitioner challenged the said assessment order by filing another writ petition being S.B.Civil Writ Petition No.10/2002 in which the interim order was granted by the court against the recovery of tax from the petitioner. During pendency of the writ petition, the Finance Department, Government of Rajasthan issued a Notification dated 11.4.2002 exempting the Units of the Central Arid Zone, both at Jodhpur and Bikaner for payment of land and building tax, however, in the said notification it was mentioned that the property used for residential and commercial purposes shall not be exempted from payment of land and building tax. In view of the above notification, this Court ordered that assessment already made shall have to be revived in the light of the notification dated 14.4.2002 and after observing that if the petitioners feel aggrieved by the partial exemption granted by the State Government, it shall be at liberty to file a fresh writ petition. After the order of this Court in S.B.Civil Writ Petition No.10/2002 dated 20.5.2002, the respondent-Assistant Director, Land & Building Tax Department again issued notice to the petitioner for making fresh assessment and the petitioner again raised the objection based upon Article 285 of the Constitution of India, but the Assistant Director, Land & Building Tax, Jodhpur passed the assessment orders as mentioned and issued the demand notices.

It appears from the judgment of the Hon'ble Apex Court delivered in the case of P.K. Ramachandra Iyer(supra) that the matter was thoroughly considered by the Hon'ble Supreme Court on facts as well as on the point of law and Hon'ble the Apex Court has already held that ICAR is an instrumentality of the State having control of the Government of India, despite the fact that the ICAR is a society registered under the Societies Registration Act but is wholly financed by the Government of India, its budget was voted upon as part of the expenses incurred in the Ministry of Agriculture and even when its status underwent a change, it was declared as an attached office of the Govt. of India and in order to make it financially viable, a cess was levied, meaning thereby that the taxation power of the State was invoked and the proceeds of the tax were to be handed over to ICAR for its use. Therefore, in view of the purpose for which ICAR established as mentioned above, it is held that the ICAR is the instrumentality of the State, as held by the Hon'ble Apex Court that " ICAR is almost an inseparable adjunct of the Govt. of India having an outward form of being a society, it could be styled as a Society set up by the State and, therefore, would be an instrumentality of the State."

In the light of the above, the properties in question held by the petitioners is exempt from any State

tax in view of the Article 285 of the Constitution of India and, therefore, the levy of tax by the assessment orders dated 20.10.2003 (Annx.5) and dated 20.10.2003( Annx.12) are absolutely illegal and is in violation to the provisions of Article 285 of the Constitution of India.

Therefore, both the writ petitions are allowed. The assessment order dated 20.10.2003(Annx.5) and consequential demand notice dated 22.2.2003(Annx.6) in connection with S.B.Civil Writ Petition No733/2004 and assessment order dated 20.10.2003(Annx.12) and consequential demand notice date4d 20.10.2003(Annx.13) in connection with S.B.Civil Writ Petition No. 7053/2003 are set aside and it is declared that the properties owned by the petitioners are exempt from the payment of land and building tax in view of Article 285 of the Constitution of India. It is also held that the properties of the petitioners is exempt from the tax even without there being any order of exemption of the State Government like the Notification dated 11.4.2002 (Annx.1).

**( PRAKASH TATIA),J.**